

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.9320 Limitations on Notices of Deficiency (IITA Section 905)

TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.9320 Limitations on Notices of Deficiency (IITA Section 905)

- a) In general
With respect to a taxable year for which a taxpayer filed a return, no deficiency shall be assessed or collected except as otherwise provided in the Act unless the Department issues a notice of deficiency not later than 3 years after the later of the last day prescribed for filing or the date the return was filed. See subsection (h) regarding when a return is deemed filed.
- b) Omission of more than 25% of income
If a taxpayer omits from base income an amount in excess of 25% of the amount of base income stated in the return, a notice of deficiency may be issued at any time not later than 6 years after the date the return was filed. There shall not be taken into account as an amount omitted from base income any amount disclosed in the return or in a statement attached thereto in a manner adequate to apprise the Department of its nature.
- c) No return or fraudulent return
If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by the Act, a notice of deficiency may be issued at any time. The issuance of a notice of deficiency under IITA Section 904(b) (see 86 Ill. Adm. Code 100.9300(b)) does not cause the running of any limitations period to begin.
- d) Failure to report federal change
If a taxpayer fails to notify the Department of an alteration or change required by IITA Section 506(b), a notice of deficiency may be issued at any time. The assessment proposed in any such notice of deficiency shall be limited to the amount of deficiency resulting under the Act from recomputing the taxpayer's base income for the taxable year by giving effect to the item(s) subject to the notification requirements of the preceding sentence. Inasmuch as IITA Section 506(b) requires the filing with the Department of a notification of alteration within the 120-day period therein (see 86 Ill. Adm. Code 100.9200(a)(4)), a notice of deficiency may be issued at any time in absence of such notification and shall be limited in the same manner as that described in (e) below.
- e) Report of federal change
In any case where a taxpayer has given notification to the Department of an alteration as required by IITA Section 506(b), the Department, not later than 2 years after the

date such notification is received, may issue a notice of deficiency proposing assessment limited to the amount of deficiency resulting under the Act from recomputing the taxpayer's base income for the taxable year by giving effect to the item(s) specified in the notification of alteration.

f) Extension by agreement

Where before expiration of the time otherwise prescribed in this section for issuance of a notice of deficiency pertinent to a return or returns for one or more taxable years the Department has obtained the taxpayer's written consent to issuance after such time, then a notice of deficiency for any or all of such years may be issued at any time prior to the expiration of the extended period so agreed upon. In addition to one original on Form IL-872, Consent Fixing Period of Limitation upon Assessment of Income Tax, carbon copies (or photocopies) thereof are to be prepared (for execution as duplicate originals) in number equal to the number of taxable years involved. After proper execution and submission by the taxpayer, the consent will become effective upon acceptance and authorized execution on behalf of the Department, after which one executed duplicate copy will be mailed to the taxpayer; one of the original and remaining executed copies shall be attached to each of the original returns for the involved taxable years. Similarly, prior to its expiration, such extended period may be successively further extended for any or all of such taxable years by the obtaining of a further written consent. If upon being requested to do so, the taxpayer delays or declines or for other reason fails to execute and furnish Form IL-872 for a taxable year or years which otherwise soon would become barred, the Department's recourse ordinarily is to issue a notice of deficiency, which is timely and within previously extended periods under IITA Section 905, setting forth adjustments and reasons therefor under IITA Section 904(c). On the other hand, where the Department has not requested Form IL-872, a taxpayer can prevent the expiration of the statutory period during which a credit or refund may be made in connection with items he specifies therein by filing a claim for refund in accord with IITA Section 909(d) within the time limitations imposed in IITA Section 911. (See 86 Ill. Adm. Code 100.9400 and 100.9410)

g) Erroneous refunds

In any case where tax payable under the Act has been erroneously refunded, a notice of deficiency not to exceed the amount so refunded may be issued within 2 years from the date of the refund, or within 5 years therefrom if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

h) Time return deemed filed

For purposes of this section, a return filed before the last day prescribed by law (including any extensions of time for filing) shall be deemed to have been filed on such last day. The last day prescribed for filing returns shall include any automatic extensions of time for filing.

i) Request for prompt determination of liability

1) In general

In the case of a tax return required under the Act in respect of a decedent, or by his estate during the period of administration or by a corporation meeting the conditions stated in (3) below, in lieu of the 3-year limitations period in IITA

Section 905(a)(1) which ends 3 years after the date the return was filed, such period if earlier shall end 18 months after the filing with the Department of three executed copies of a written request for prompt determination of liability by the executor, administrator, or other fiduciary representing the decedent's estate or by an officer authorized to act for such corporation or by the fiduciary provided if required under IITA Section 502(b)(4).

- 2) Purpose; evidence of authority to act
The written request to be effective must be transmitted separately from and after the filing of the return and in a manner sufficient to put the Director of Revenue on notice of the request for prompt determination of liability. The shortened limitations period does not apply if more than 25% of base income is omitted from the return or in case of a false or fraudulent return or where no return has been filed (see subsections (b) and (c)). If not previously filed with the Department, there should be furnished with the written request in respect of a decedent copies of Letters Testamentary or of Administration, properly certified true and in full force and effect within 3 months of the day submitted. In the case of a corporation, consistent with the provisions in IITA Sections 503(a) and (b), the signature (with his title) of the president, vice-president, or treasurer shall be prima facie evidence of his authority.
- 3) Corporate intent and undertaking to dissolve
For application of this subsection in case of a corporation, such written request must notify the Department, as of the date thereof:
 - A) that the corporation contemplates dissolution at or before the expiration of the limitations period of 18 months (or less as the case may be), in which case the dissolution (for example, the proceedings required by applicable state law after the filing of an intent to dissolve) must in good faith be undertaken within and the dissolution must be completed (under the State law requirements) by the termination of such period;
 - B) that a dissolution has in good faith begun if such is a fact, in which case the dissolution must be completed by the termination of such limitations period; or
 - C) that, if such is a fact, that the dissolution is completed.
- j) Withholding tax
In the case of returns required under Article 7 of the Act relating to amounts withheld, or required to have been withheld, as tax a notice of deficiency may be issued at any time not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was required. (Effective for taxable years ending after December 30, 1973.)

(Source: Amended at 14 Ill. Reg. 10082, effective June 7, 1990)